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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,098	02/25/2004	Thomas Mohr	Q79903	8800

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EXAMINER	
NGUYEN, BRIAN D	
ART UNIT	**PAPER NUMBER**
2416	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/785,098	MOHR, THOMAS	
	Examiner	Art Unit	
	BRIAN D. NGUYEN	2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh et al (6,751,660) in view of Fink et al (7,043,633).

Regarding claim 1, Mansingh discloses a network monitor (114) connected to a first dedicated packet-switched data network (non-SONET out-of-band control channel via Ethernet in col. 3, lines 56-58) for monitoring traffic on the first dedicated packet-switched data network to filter protocol frames in the first dedicated packet-switched data network in order to extract information about a network topology and status of a second automatically switched optical transport network (SONET network 110), the first dedicated packet-switched data network (see Ethernet network in col. 3, lines 56-58) connecting network controllers controlling associated network elements (120) of an automatically switched optical transport network (see network in figure 1); the network controllers advertise the network topology and status (see col. 4, lines 30-32 and 66-67) of the automatically switched optical network (network in figure 1) in the dedicated packet switched data network (non-SONET out-of-band control channels, e.g. via Ethernet in col. 3, lines 57-58) and the monitor receives the network topology and status information transmitted in the dedicated packet switched data network (Ethernet) from the controllers (see col. 6, lines 8-14) and displays these information to a user (see col. 5, lines 17-23

and col. 6, lines 14-16). Mansingh does not specifically disclose passively monitoring the traffic, filter protocol frames of a predefined protocol type by which the network controllers advertise the network topology and status and extract from the filtered protocol frames information about the topology and status of the transport network. However, passively monitoring the traffic to extract the topology and status information is well known in the art. Fink discloses this well-known feature 9 (see col. 2, lines 37-47). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to passively monitor the traffic and extract the information as taught by Fink in the system of Mansingh in order to use the information for managing the network.

Regarding claim 2, Mansingh does not specifically disclose a sniffer. However, Fink discloses the use of a sniffer (see col. 2, line 38). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the sniffer as taught by Fink in the system of Mansingh in order to capture data from the network connection.

Regarding claim 3, Mansingh further discloses the predefined protocol type is OSPF (see col. 4, lines 23-25).

Regarding claims 4 and 5, Mansingh discloses the network includes a plurality of domains (see col. 5, lines 52-54) and displaying the topology and status information graphically to a user but does not specifically disclose the use of small circles, large circles, and colors to describe network elements or states. However, to use circles, colors or any other symbols to describe a network element or status is a matter of design choice. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use circles and colors in order to distinguish one element from the others.

Regarding claim 6, Mansingh further discloses a command line interface to one of the network controllers adapted to program the connected network controller to broadcast a request for an immediate update of topology and status information and/or to program the network controller to set up a new connection and/or perform other configuration changes in the automatically switched optical transport network (see col. 7, lines 29-67).

Regarding claim 8, claim 8 is a method claim that has substantially all the limitations of the respective apparatus claim 1. Therefore, it is subject to the same rejection.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh in view of Fink as applied to claim 1 above, and further in view of Clemm et al (7,126,941).

Regarding claim 7, Mansingh discloses all the claimed subject matter as described in previous paragraph except for detecting a mismatch. However detecting a configuration mismatch is well known in the art. Clemm discloses detecting configuration mismatch (see col. 2, lines 12-14). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to detect the configuration mismatch as taught by Clemm in the system of Mansingh in order to meet specific needs.

Response to Arguments

4. Applicant's arguments filed 11/18/08 have been fully considered but they are not persuasive.

The applicant argues that *Mansingh in view of Fink does not disclose or suggest "[a] network monitor connected to a first dedicated packet-switched data network for passively monitoring traffic on the first dedicated packet-switched data network to filter protocol frames in*

the first dedicated packet-switched data network in order to extract information about a network topology and status of a Second automatically switched optical transport network, the first dedicated packet- switched data network connecting network controllers controlling associated network elements of the second automatically switched optical transport network," as recited in independent claim 1. Nor does Mansingh in view of Fink disclose or suggest "[a] method of passively monitoring traffic on a first dedicated packet-switched data network to filter protocol frames in the first dedicated packet-switched data network in order to extract information about a network topology and status of a second automatically switched optical transport network, the first dedicated packet-switched data network connecting network controllers controlling associated network elements of the second automatically switched optical transport network," as recited in independent claim 8. The examiner respectfully disagree because Mansingh does discloses a second network (SONET) and a first network (non-SONET Ethernet network) where network controllers (NEs) are connected to one another and where a network topology and status of the SONET network are advertised (see advertisement in col. 4, lines 30-33). The monitor 114 is connected to the controllers via an Ethernet link to monitor and receive the network topology and the status information (see figures 1 and 4 for network connection and col. 4, lines 15-18). Note that the Ethernet link belongs to the first network, not the second SONET network and that the controllers advertise the network topology and status information on the Ethernet network. Note also that the monitor in fig. 3 of the claimed invention connected to Ethernet ETN and therefore is connected to the controller. This network configuration is the same as the configuration shown in figure 4 of Mansingh where the monitor 114 is connected to the controllers 120. Note that the claims do not describe whether the monitor is a separate element or

is integrated into one of the controllers. Mansingh discloses the monitor 114 that receives and displays the advertised network topology and status information. Although Mansingh teaches the monitor receives the network topology and status information of the transport network, Mansingh does not specifically disclose passively monitor the traffic and filter protocol frames of a predefined protocol type by which the network controllers advertise the network topology and status and extract from the filtered protocol frames information about the topology and the status of the transport network. However, Fink clearly teaches passively monitor the traffic to extract the topology and the status information (see col. 2, lines 37-42 where Fink teaches of "sniffers" that passively monitor freely transmitted network traffic and thereby gather critical network topology information, including the identities of machines sending and receiving data and the intermediate security devices that forward the data. Therefor, the combination of Mansingh and Fink is sufficient to render the claims obvious under 35 USC 103.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN D. NGUYEN whose telephone number is (571)272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/15/09
/Brian D Nguyen/
Primary Examiner, Art Unit 2416